SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. M-408

LEWIS REYNOLDS, Claimant,

v.

THE UNITED STATES OF AMERICA, Defendant

1. PETITION—Filed November 13, 1931.

The Honorable the Chief Justice and the Associate Justices of the Court of Claims of the United States:

The claimant respectfully represents:

1. The claimant, Lewis Reynolds, is a citizen of the United States and a resident of the District of Columbia.

2. On or about November 30, 1897, claimant enlisted in the regular United States Army, and served therein in the 25th Infantry thereof until 1901 when he was honorably discharged, during which time claimant served in the Spanish American War; claimant thereupon again enlisted in the [fol. 2] United States Army and served therein in Troop C, 9th Regiment, U. S. Cavalry, until 1904 when he was again honorably discharged, during which time claimant served in the Philippine insurrection; and thereupon claimant again enlisted in the United States Army and served in the Infantry thereof and was honorably discharged therefrom in 1907.

3. In 1911 claimant was suffering from a neuropsychiatric ailment and was adjudged to be of unsound mind by the Supreme Court of the District of Columbia on June 6, 1911, and was thereupon committed to St. Elizabeth's Hospital in the District of Columbia.

4. On or about April 21, 1930, claimant regained his sanity, recovered from said ailment and was thereupon discharged from said Hospital.

5. On May 2, 1922, pursuant to an Act of Congress, approved June 5, 1920, the Bureau of Pensions issued to

claimant its Certificate No. 1202727, setting forth that he was a private, Troop C, 9th Regiment U. S. Cavalry, and was entitled to pension at the rate of $30.00 per month to commence from August 8, 1921; thereafter under date of June 4, 1926, said Bureau of Pensions issued to claimant a schedule of increased pensions pursuant to provisions of the Act of Congress of May 1, 1926, reciting that the former pension of $30.00 per month was increased to $50.00 per month to commence from June 4, 1926.

6. On August 13, 1931, the said United States Veterans' Bureau issued a certificate of recognition as a veteran pursuant to Sec. 202 (10) World War Veterans' Act, 1924, [fol. 3] as amended, in which certificate said Bureau certified that claimant is recognized as a veteran of the Spanish-American War within the meaning of Sec. 202 (10) of said World War Veterans' Act as amended, and that he is entitled to receive hospital treatment and necessary traveling expenses incident thereto.

7. That at the time of claimant's recovery and discharge from St. Elizabeth's Hospital as aforesaid claimant had become entitled to the payment to him by the United States of a large sum of money as a pension, namely, $4,036.00, under the certificate and schedules aforesaid and under the Acts of Congress referred to in paragraph 5 hereof, which said sum of money had been paid to said Hospital by the Bureau of Pensions on behalf of claimant; but notwithstanding claimant being entitled to said sum of money upon his recovery and discharge as aforesaid, said Hospital deducted therefrom and retained the sum of $776.83 as having been advanced by it to claimant for clothing and cash, and the further sum of $3,259.17 on account of board from May 17, 1922, to February 6, 1930.

8. Section 202 (10) of the World War Veterans' Act of 1924, as amended (Title 38, U. S. Code, Section 484), provides that all hospital facilities under the control and jurisdiction of the Veterans' Bureau shall be available to every honorably discharged veteran of the Spanish-American War or the Philippine insurrection suffering from, among other things, a neuropsychiatric ailment or disease, regardless of whether such ailment is due to military service or otherwise, and that the pension of such veteran entitled to hospitalization under said Act shall not be subject to deduc-

tion while such veteran is hospitalized in any Government [fol. 4] hospital for board, maintenance or any other purpose incident to hospitalization, and that prior acts inconsistent with such provisions be, and the same are modified accordingly, specifically mentioning the Act of February 2, 1909, as being modified insofar as it is inconsistent with the provisions of said World War Veterans' Act.

9. That claimant was enfitled to hospitalization under the Act last aforesaid, and said pension was therefore not subject to the deduction made by said St. Elizabeth's Hospital of $3,259.17 on account of board while claimant was hospitalized in said St. Elizabeth's Hospital, which said Hospital is a Government hospital and also a hospital whose facilities are utilized by the Veterans' Bureau under Sec. 10 of said World War Veterans' Act (Sec. 434, Title 38, U. S. C.) as amended.

10. That claimant protested against the refusal by said St. Elizabeth's Hospital to pay him the aforesaid pension with deduction for board, and against the retention by said St. Elizabeth's Hospital of the sum aforesaid for board, but said St. Elizabeth's Hospital nevertheless deducted and retained the aforesaid sum of $3,259.17 on account of board of claimant on the ground that said deduction for board was authorized and permitted pursuant to the Act of February 2, 1909; notwithstanding the provision of Sec. 202 (10) of said World War Veterans' Act of 1924, as amended, supra, expressly providing that prior acts inconsistent with such provisions are modified accordingly, and specifically mentioned therein the Act of February 2, 1909; and claimant thereupon appealed to the Secretary of the Interior, and the Secretary of the Interior sustained the action of [fol. 5] St. Elizabeth's Hospital on the basis of an opinion of the Comptroller General of the United States under date of August 18, 1926, and found in 6 Comp. Gen. 126, wherein the said Comptroller General ruled that veterans who have not been taken over by the Veterans' Bureau and who are not being hospitalized in said St. Elizabeth's Hospital accordingly, are not exempt from reimbursing the Hospital for board.

11. Claimant thereupon filed his petition with the United States Veterans' Bureau seeking a retroactive order for

hospitalization in which petition the aforegoing facts were set out, and thereafter, on September 16, 1930, the Acting Director of said United States Veterans' Bureau held in effect that, assuming the facts as set out to be true, the claimant would have been entitled to hospitalization by the Bureau had he or someone acting for him made application therefor; that as no application was filed the Bureau had no opportunity of determining the question of the claimant's right to hospitalization; that as claimant has now been discharged from St. Elizabeth's Hospital the question is moot; and that there is no authority for the Director of the Veterans' Bureau to issue a retroactive order entitling hospitalization in such case.

12. That during the time of claimant's commitment to said St. Elizabeth's Hospital and until his discharge from said Hospital and recovery of his sanity, claimant was unable to make any claim or take any action with reference to said pension, or the right to receive the same without deduction, but promptly and within a reasonable time after his recovery of his sanity and discharge from said Hospital claimant has made repeated efforts through the appropriate [fol. 6] executive departments to recover said money, all as aforesaid.

13. Claimant therefore avers that there is justly due and owing to him from the United States on account of the matters hereinbefore set forth the sum of $3,259.17 after deducting all just set-offs and demands on the part of the United States; that he is the sole owner of the claim herein sued upon and that no assignment or transfer of the claim or any part thereof or any interest therein has been made.

14. No action upon this claim, other than herein set forth, has been taken before the Congress or any of the departments of the Government. Claimant has at all times borne true allegiance to the Government of the United States and has not in any way aided, abetted or given encouragement to its enemies, or aided in rebellion against the Government; claimant is the sole owner of the claim set forth herein and has not assigned the same, or any part thereof.

Wherefore, claimant prays judgment against the United States for $3,259.17 with interest thereon as provided by

law, and for such other and further relief as to this Court may seem proper.

Hill, Ross & Hill, by (Sgd.) Francis W. Hill, Jr., Transportation Building, and David A. Pine, Union Trust Building, Attorneys for Claimant.

[fol. 7] *Duly sworn to by Lewis Reynolds. Jurat omitted in printing.*

[fol. 8] II. General Traverse—Filed December 23, 1931

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Charles B. Rugg, Assistant Attorney General.

III. Argument and Submission of Case

On October 11, 1933, this case was argued and submitted on merits by Mr. Francis W. Hill, Jr., and Mr. David A. Pine, for plaintiff, and by Mr. Louis R. Mehlinger, for defendant.

[fol. 9] IV. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Green, J.**—Filed November 6, 1933

Messrs. Francis W. Hill, Jr., and David A. Pine for plaintiff. Hill, Ross & Hill were on the brief.

Mr. Louis R. Mehlinger, with whom was Mr. Assistant Attorney General Frank J. Wideman, for defendant.

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

Special Findings of Fact

1. Plaintiff is a citizen of the United States and a resident of the District of Columbia.

2. He first enlisted in the United States Army on November 30, 1897, at Washington Barracks, D. C., and was assigned to Company H, Twenty-fifth Infantry, and was

honorably discharged as a private on November 29, 1900, at Iba, Luzon, Philippine Islands, by reason of expiration of term of service. During this enlistment he served in the Spanish-American War. He reenlisted on January 17, 1901, at Washington Barracks, D. C., and was assigned to Troop C, Ninth United States Cavalry, and was honorably discharged as a private on January 16, 1904, by reason of expiration of term of service. During this enlistment he served in the Philippine insurrection. He reenlisted on January 26, 1904, at St. Louis, Missouri, and was assigned to Company A, Twenty-fifth United States Infantry, and was honorably discharged as a private on January 25, 1907, at Fort Reno, Oklahoma, by reason of expiration of term of service.

3. On May 9, 1911, plaintiff was held in the District of Columbia on a charge of assault and was thereafter indicted for assault with a dangerous weapon. On May 22, 1911, a petition for inquiry as to his sanity was filed. On May 24, 1911, an inquisition in lunacy was ordered, and on June 6, 1911, a jury was sworn and returned a verdict of unsound mind. On June 10, 1911, the Supreme Court of the District of Columbia certified to the Secretary of the Interior that on June 6, 1911, in the case of Lewis Reynolds, No. 27574, he was found by a jury impaneled according to law to be of unsound mind. Thereafter, the Secretary of the Interior, pursuant to provisions of section 927 of the Code of Laws for the District of Columbia, as amended [fol. 10] by the act of April 14, 1906 (34 Stat. 113), ordered that plaintiff be confined in the Government Hospital for the Insane (now St. Elizabeths Hospital), and that if he be not indigent his estate be charged with the expense of his support in said institution. Pursuant to said authorization and upon order of the Secretary of the Interior he was admitted to St. Elizabeths Hospital on June 19, 1911.

4. On April 21, 1922, plaintiff's claim for a pension was approved, effective August 8, 1921, in the amount of $30 a month, and pension certificate No. 1202727 was issued to him. On June 4, 1926, said pension was increased to $50 a month, and on June 25, 1930, to $60 a month. Payment of the pension at the rate of $30 a month from August 8, 1921, and $50 a month from June 4, 1926, through April 3, 1930, was made to the Superintendent of St. Elizabeths

Hospital pursuant to the Department's interpretation of the act of February 2, 1909 (title 24, section 165, U. S. C.).

5. Plaintiff remained in St, Elizabeths Hospital until April 25, 1930, when he was discharged in the custody of his brother, Elijah Reynolds, 445 P Street, northwest, Washington, D. C., who was fully acquainted with his mental condition and agreed with the Superintendent to maintain, provide, and care for him, and expressly stated that he had the means wherewith to do so, and assumed all responsibility for his acts and welfare. During all of said time of confinement plaintiff was suffering from a neuropsychiatric ailment and was of unsound mind.

6. At the time of plaintiff's discharge from St. Elizabeths Hospital there had been credited on the books of said institution under the certificate of the Bureau of Pensions $4,036, representing funds which had been paid to said institution by the Bureau of Pensions on behalf of plaintiff.

Upon plaintiff's discharge, St. Elizabeths Hospital deducted from said pension monies $776.83, which had been advanced to plaintiff for clothing and cash, and $3,259.17 on account of board from May 7, 1922, to February 6, 1930, in accordance with the Department's interpretation of the acts of February 20, 1905, and February 2, 1909 (U. S. C., title 24, section 165), and regulations of the Secretary of the Interior dated May 1, 1905.

No deduction for board was made after February 6, 1930, due to the fact that plaintiff did not remain in the hospital after that date but from that date to the date of his discharge, April 25, 1930, he was in the custody of his brother and reported from time to time as ordered by the medical staff at St. Elizabeths Hospital.

7. At the time of his discharge plaintiff protested against the refusal of St. Elizabeth's Hospital to pay him $3,259.17, which had been deducted and retained on account of his board.

8. During the time plaintiff was confined at St. Elizabeths Hospital, no claim was made on his behalf as to his right to receive, without any deduction on account of his board, pension monies paid to said institution by the Pension Bureau. On June 23, 1930, an application was made

on his behalf by Francis W. Hill, [illegible] order from the Director of the Veterans' Bureau authorizing and directing his hospitalization [illegible] from the effective date of the World War Veterans' Act, as amended by the act of June 7, [illegible] discharge. On September 12, 1930 [illegible] [fol. 11] Veterans' Bureau decided [illegible] tion was made for hospitalization [illegible] acting in his behalf, the Bureau [illegible] determining the question of plaintiff's hospitalization and as he had been discharged [illegible] the question was moot and there was [illegible] for the Director of the Bureau to issue [illegible] authorizing hospitalization in such [illegible]

9. On August 13, 1931, the United States Veterans' Bureau issued to the plaintiff a "Certificate of Hospitalization of a veteran", under section 202 (10) of the World War Veterans' Act, 1924, as amended, the pertinent portion of which certificate is as follows:

"This is to certify that Lewis [illegible] a veteran of Span.-Amer. War within the meaning of section 202 (10) of the World War Veterans' Act, 1924, as amended, and he is, therefore, entitled to hospital treatment and necessary traveling expenses incident thereto when properly authorized by the Veterans' Bureau, provided the requirements of law are complied with regarding the physical condition of the veteran at the time of application for hospital admission and the character of hospital facilities to which he may be admitted in accordance with. (Section 202 (10) does not authorize hospitalization or treatment in foreign countries.)"

10. St. Elizabeths Hospital [illegible] now under the control of the Veterans' Bureau, but the Veterans' Administration has the right to make use of its facilities for any [illegible]

11. On March 10, 1933, as a result of proceedings had in the Supreme Court of the District of Columbia, plaintiff was adjudicated to be of sound [illegible]

CONCLUSION [illegible]

Upon the foregoing special findings [illegible] made part of the judgment herein, [illegible]

conclusion of law, that the plaintiff is not entitled to recover, and it is therefore ordered that his petition be dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and collected by him according to law.

OPINION

GREEN, Judge, delivered the opinion of the court:

The plaintiff, an honorably discharged enlisted man of the United States Army, brings this suit to recover money deducted from his pension on account of his board from May 7, 1922, to February 6, 1930, while he was an inmate of St. Elizabeths Hospital.

There is no dispute over the facts which, so far as necessary thereof to be considered in deciding this case, are hereinafter set forth.

Plaintiff enlisted in the United States Army on November 30, 1897, and served until January 25, 1907, under three enlistments, which included service in the Spanish American War and the Philippine insurrection. At the completion of his enlistments he was honorably discharged. Afterwards he was indicted in the District of Columbia for assault with a dangerous weapon. He does not, however, appear to have been tried on this charge but was declared [*2] by a jury to be of unsound mind; and, pursuant to section 927 of the Code of the District of Columbia, the Secretary of the Interior ordered that he be confined in the Government Hospital for the Insane (now St. Elizabeths Hospital), and that if he be not indigent his estate be charged with the expense of his support in this institution. Accordingly he was admitted to this hospital on June 19, 1911. On April 25, 1930, he was discharged in the custody of his brother. The parties have stipulated that while plaintiff was confined in the hospital he was suffering from a neuropsychiatric ailment and was of unsound mind. Beginning with August 8, 1921, the plaintiff was allowed a pension by the Government which was paid to the Superintendent of St. Elizabeths Hospital in accordance with law. When plaintiff was discharged there was to his credit on the books of the hospital $4,036 which had been paid by the Bureau of Pensions on his behalf. He was charged

with $776.83 which had been advanced to him for clothing and cash, and $3,259.17 on account of board from May 7, 1922, to February 6, 1930, in accordance with the act of February 2, 1909, and the Interior Department regulations made pursuant thereto. No objection is made to the deduction on account of clothing and cash, but when discharged plaintiff protested against the refusal of the hospital to pay him the sum that had been deducted on account of his board, and the issue in the case is whether this sum was lawfully retained.

It is contended on behalf of the plaintiff that legislation subsequent to the act above referred to made this deduction illegal. This renders it necessary that we should consider the statutes upon which plaintiff bases his claim and the proceedings of the Veterans' Bureau.

On June 23, 1930, an application was made on behalf of the plaintiff for an order from the Director of the Veterans' Bureau authorizing and directing his hospitalization at said institution from the effective date of the World War Veterans' Act, as amended by the act of June 7, 1924, to the date of his discharge, but the Bureau decided that as no previous application had theretofore been made for his hospitalization it had no opportunity to determine his right thereto, and as he had been discharged from the institution the question was moot, and there was no authority in law for the issuance of a retroactive order authorizing his hospitalization. On August 13, 1931, the Veterans' Bureau certified that plaintiff was recognized as a veteran of the Spanish American War within the meaning of section 202 (10) of the World War Veterans' Act of 1924, as amended, and that he was entitled to receive hospital treatment, provided the requirements of said section regarding his physical condition at the time of the application for hospital admission were complied with. It should be noted in this connection that St. Elizabeths Hospital has never been and is not now under the control of the Veterans' Administration, but the Veterans' Administration has the right to and does make use of the facilities of this hospital for insane veterans. As bearing on his right to bring this suit it may be also noted that March 10, 1933, the plaintiff was duly adjudicated by the Supreme Court of the District of Columbia to be of sound mind.

The plaintiff having been duly awarded a pension, it appears to be the theory of his case as stated by counsel that

all that is necessary to be shown on his behalf to entitle him to a judgment is that he was suffering from an ailment which under the law entitled him to hospitalization and [fol. 13] that he was hospitalized in a Government hospital. In support of this contention plaintiff relies upon that portion of section 202 (10) of the World War Veterans' Act, 1924, as amended by section 9 of the act of July 2, 1926, which provides:

"That the pension of a veteran entitled to hospitalization under this subdivision [section] shall not be subject to deduction which such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization."

In quoting this provision in their respective briefs, counsel for plaintiff and defendant do not exactly agree, plaintiff using the word "section" and defendant the word "subdivision." This, however, is only an apparent and not a real difference, being caused by the fact that plaintiff's counsel quotes from the United States Code, which in some instances uses section numbers for what the statute has only numbered as a subdivision, and counsel for defendant uses the language of the statute itself.

As the case is stated on behalf of the plaintiff, it is a very simple one. He was duly awarded a pension as a veteran. The findings show that he was suffering from an ailment under which he could be hospitalized, and he was in fact hospitalized in a Government hospital. This, plaintiff contends, is all that is necessary under the statute to entitle him to a judgment, but as we view the case there are other matters to be considered, and first of all we must determine whether this court is authorized to consider the evidence with relation to his ailment and thereupon determine that he was entitled to hospitalization.

The World War Veterans' Act, 1924 (43 Stat. 607), as amended by section 1 of the act of July 3, 1930 (46 Stat. 991, U. S. C., Title 38, c. 10, sec. 426) provides:

"Sec. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this act, which are necessary or appropriate to carry out its purposes, and

shall decide all questions arising under this act; and all decisions of questions of fact and law affecting any claimant to the benefits of Titles II, III, or IV of this act shall be conclusive, except as otherwise provided herein."

This provision has been held to commit to the Director of the Bureau the duty and authority of administering its provisions and deciding all questions under it and that his decision is conclusive and not subject to judicial review except under circumstances not necessary to mention here. See Silberschein v. United States, 266 U. S. 221, 225, and United States v. Williams, 278 U. S. 255, wherein it is said with reference to a similar provision that "exclusive authority is vested in the Director of the Bureau *to entertain and pass upon* all claims for payment of these certificates" (for adjusted compensation). [Italics ours.]

If, in some other case, a veteran who unquestionably was suffering from some ailment which the statute specified as a cause for hospitalization began an action in a Federal court of general jurisdiction asking that he be granted hospitalization, we think the court would not hesitate to declare that it had no jurisdiction of the matter.

[fol. 14] In our opinion, the same rule applies to the case at bar as in the hypothetical case above stated. While the statute specifies certain physical ailments as a cause for hospitalization of a veteran, we think that for the purpose of applying the World War Veterans' Act no court is authorized to consider the fact of their existence and therefrom decide that he is entitled to hospitalization under the act. This we think is true no matter how obvious the fact may be. The Director of the Bureau, as we construe the law, alone is authorized to determine the facts or institute proceedings for the determination thereof, and order the hospitalization of the veteran or certify to his right thereto. As recited above, no application was made to the Director of the Bureau until after plaintiff's discharge from the hospital, and no decision was made by the Director as to his right to hospitalization during the period in question. Under the provisions of the statute and the facts in the case we think this court is not authorized to determine whether plaintiff was entitled to hospitalization during the period he was an inmate of St. Elizabeths Hospital, or to entertain a case which depends upon a determination of that matter and pass upon the questions so involved.

It is also urged on behalf of defendant that conceding, for the purposes of the argument, that the plaintiff was entitled to hospitalization during the period in question, the provisions of the statute with reference to deductions for board have no application under the facts of this case. As we have already shown, the provision upon which plaintiff relies is found in subdivision 10 of section 202 of the World War Veterans' Act, as amended, and applies only when a veteran is "entitled to hospitalization under this subdivision." The subdivision begins with the provision that "all hospital facilities under the control and jurisdiction of the Bureau shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection", etc., suffering from neuropsychiatric ailments, and it is further provided that the Director is authorized, so far as the Government facilities permit, to furnish such hospitalization. The contention is made on behalf of the defendant that the subdivision applies only to hospital facilities under the control and jurisdiction of the Bureau. The question raised is not free from doubt but we are inclined to think that this is the proper construction of the act and that it was not intended to apply to hospitals like St. Elizabeths which are not under the control ~~of the Bureau~~.

It is further contended on behalf of the defendant that in no event can plaintiff make any claim on account of the deduction of pension money before July 2, 1926, which was the time that the section under which he claims was enacted, but under our holding on the principal issue in the case it is not necessary to determine the question thus raised.

It follows that the plaintiff's petition must be dismissed. It is so ordered.

Whaley, Judge, and Williams, Judge, concur.

Littleton, Judge, and Booth, Chief Justice, dissent.

[fol. 15] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 6th day of November, A. D., 1933, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and it is therefore ordered that his petition be, and the same hereby is, dismissed.

VI. Proceeding Had in Case

On December 26, 1933, the plaintiff filed a motion for leave to secure transcript of record in forma pauperis.

Said motion was allowed by the court January 18, 1934.

[fol. 16] Clerk's Certificate to foregoing transcript omitted in printing.

Endorsed on cover: In forma pauperis. File No. 38,337. Court of Claims. Term No. 734. Lewis Reynolds, Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed January 20, 1934. File No. 734, O. T., 1933.

[fol. 17] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 2, 1934

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.